IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 535 of 2006

With

CRIMINAL REVISION APPLICATION NO. 536 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVESH CHANDULAL JOSHI - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR DEEPESH C JOSHI for the Applicant in both the matters.
Ms.Nandini Joshi, Addl. PUBLIC PROSECUTOR for Respondent no.1 in both matters.
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 25/08/2006

ORAL JUDGMENT

In both present Revision Applications, the judgment and order dated 25th July, 2006 below application exh. 24 in Criminal Revision Application No. 82 of 2004 passed by the learned Sessions Judge, Amreli is under challenge, whereby the Revision Applications have been partly allowed and the papers of charge-sheet were returned to police officers for taking sanction under section 197 of the Code of Criminal Procedure with a direction that this process ought to be over in pursuance of the provisions of section 173(8) of the Code of Criminal Procedure in criminal case no. 648 of 2000 and the matter was remanded to the trial court.

2. I have heard the learned advocate for the applicant who has mainly submitted that the criminal complaint was filed by the present applicant against three accused. They gave applications exhs. 13 and 14 which were dismissed by the learned Judicial Magistrate, First Class, Savarkundla, against which Criminal Revision Application no. 82 of 2004 was preferred by respondent no. 2 which was partly allowed and the order below exhs. 13 and 14 passed by

the learned Judicial Magistrate, First Class, Savarkundla was suspended and the whole investigation was sent to police officer who is investigating the case under section 173(8) of the Code of Criminal Procedure for taking necessary orders under section 197 of the Code of Criminal Procedure. It is also submitted by the learned advocate for the applicant that it is not obligatory on the part of the investigating officer to take sanction under section 197 of the Code of Criminal Procedure when the accused are serving in the bank and the offence committed by the respondent accused is de hors the official duty of the respondent accused and therefore, sanction is not necessary. This aspect of the matter has not been appreciated by the learned Sessions Judge, Amreli and the impugned order passed by the learned Sessions Judge, Amreli deserves to be quashed and set aside.

3. I have also heard the learned Additional Public Prosecutor who has submitted that there is nothing in the impugned order against the present applicant. The order has been passed under section

173(8) of the Code of Criminal Procedure so that investigating officer can obtain necessary orders under section 197 of the Code of Criminal Procedure for the accused persons, looking to their status in the job and the nature of the act/offence committed by them. In fact, the impugned order is in furtherance of criminal proceedings. It smoothens the crisis in the investigation and it is not in favour of the accused persons and not in favour of the present applicant who is the original complainant. The order passed by the learned Sessions Judge, Amreli is absolutely legal and in consonance with facts of the case. Nothing has been specifically directed. It permits the investigating officer to get necessary orders under section 197 of the Code of Criminal Procedure, so far as accused persons are concerned, looking to their nature of job and the offence committed by them. It is submitted by the learned Additional Public Prosecutor that if for a bank officer, permission under section 197 of the Code of Criminal Procedure is required, the same will be obtained during further investigation, otherwise report will been submitted by the

investigating officer. But the impugned order is not in favour of the accused persons and not detrimental to the criminal proceeding and therefore, the Revision Application may not be interfered with by this Court.

4. Having heard the learned advocate for both the sides and looking to the facts and circumstances of the case, I see no reason to take any deviation from the order dated 25th July, 2006 below application exh. 24 in Criminal Revision Application no. 82 of 2004 passed by the learned Sessions Judge, Amreli. Looking to the nature of order passed by the learned Sessions Judge, it appears that permission has been granted to investigating officer for getting necessary orders under section 197 of the Code of Criminal Procedure. So far as accused persons are concerned, if at all, such permission is necessary, it will be obtained by the investigating officer. The impugned order is passed under section 173(8) of the Code of Criminal Procedure. It is neither in favour of the accused, nor is against the original complainant. But the impugned order is in furtherance

of the criminal proceedings. There is no illegality in the impugned order passed by the learned Sessions Judge, Amreli, especially in view of the latest decision rendered by the Hon'ble Supreme Court reported in (2006) 4 SCC, 584. Thus, there is no substance in these Revision Applications and the same are hereby dismissed.

(D.N.Patel,J)

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